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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

January 24, 1991

Mr. J. Kirk Brown
General Counsel
Texas Department of Criminal Justice
Institutional Division
P. O. Box 99
Huntsville, Texas 77342-0099

OR91-054

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10196.

You have received from an inmate a request for his unit files and central files. You inform us that after the unit staff discussed his request with him, he modified his request for information to a request to review his classification, grievance, and medical files, all located in the Eastham Unit.

You state that you have reviewed his classification file, concluded that it contained nothing that is excepted under the Open Records Act, and have released or will release the file to him. You have advised him that he should contact the unit health administrator in order to review his medical records. Thus, you have agreed to release all of the information in the classification file and medical file. Your concern focuses on the grievance file. You claim that the grievance file is excepted from required public disclosure by sections 3(a)(1) and 3(a)(7).

Section 3(a)(1) of the act excepts

information deemed confidential by law,
either Constitutional, statutory, or by
judicial decision. (Emphasis added.)

Section 3(a)(7) of the act protects, inter alia, records
"which by order of a court are prohibited from disclosure."

Section VII.A.(18) of the Stipulated Modification of Section II.D and Section II.A of Amended Decree of the Ruiz Amended Decree¹ (hereinafter Stipulated Modification) requires the department to "promulgate and enforce rules to ensure that . . . [n]o inmate has access to sensitive information, and all sensitive materials are kept inaccessible." Section I.G of the Stipulated Modification sets forth which information is sensitive.

In Open Records Decision No. 560 (1990), this office was asked whether videotapes of forced cell transfers are excepted from required public disclosure under the Open Records Act. That decision noted that several earlier informal open records rulings concluded that because various sections of the Stipulated Modification were intended to promote the safety of individual inmates, it was not the intent of the court to deprive an inmate of "sensitive information" that pertained solely to himself, and that such information should be released to the inmate. Open Records Decision No. 560 overruled these rulings:

It is not a proper function of the opinion process to attempt to determine the court's intent in the Stipulated Modification. Because the Ruiz lawsuit is ongoing, the proper authority to determine access to 'sensitive information' is the forum court.

Open Records Decision No. 560 at 3 (footnote and citations omitted).

Subsection (a) of section 7 of the Open Records Act requires a governmental body that receives a written request for information that it considers within one of the exceptions but about which there has been no previous determination to submit the information within 10 calendar days to this office. In this instance, Open Records Decision No. 560 constitutes a prior determination, holding that any construction of the Stipulated Modification must be made by your office in the first instance and any challenge

1. The amended decree is part of court ordered prison reforms resulting from a lawsuit filed against the Texas prison system. Ruiz v. Estelle, 503 F. Supp. 1265 (S.D. Tex. 1980), aff'd in part and vacated in part, 679 F. 2d 1115 (5th Cir.), amended in part, 688 F.2d 266 (5th Cir.), cert. denied, 460 U.S. 1042 (1982).

to your construction must be addressed, not to this office, but rather to the forum court.

We have considered the exception you claimed, specifically section 3(a)(1), and have reviewed the documents at issue. A previous determination of this office, Open Records Decision No. 560 (1990), a copy of which is enclosed, resolves your request. For this reason, you may withhold the requested information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-054.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

JM/le

Ref.: ID# 9725, 10196

Enclosure: Open Records Decision No. 560 (1990)

cc: Mr. David Gonzales
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